(4)

No. 06-1520

IN THE

Supreme Court of the United States

THE LOCAL CHURCH, LIVING STREAM MINISTRY, ET AL.,

Petitioners,

v.

HARVEST HOUSE PUBLISHERS,
JOHN ANKERBERG, AND JOHN WELDON

Respondents.

On Petition for a Writ of Certiorari to the Court of Appeals for the First District of Texas

BRIEF FOR AMBASSADOR WINSTON LORD, AMBASSADOR NICHOLAS PLATT, AMBASSADOR BURTON LEVIN, DR. ED IRONS, BETTE BAO LORD, AND SIDNEY RITTENBERG AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

Jerome A. Cohen
New York University School of Law
40 Washington Square South
New York, New York 10012
United States
Phone 212-998-6169
Counsel for Amicus Curiae

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20002

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

INTERESTS OF THE *AMICUS CURIAE* 1

ARGUMENT 3

I. A Brief Overview of the Religious Situation in China 3

II. The Court of Appeals' Reduction of the Term "Cult" to an "Ecclesiastical" Definition, and its Failure to Address the Secular Understanding of "Cult" as Presented in the Encyclopedia of Cults and New Religions, Increases the Threat of Persecution to Christians Residing in Religiously Restrictive Countries such as China that Employ the Term "Cult" in a Secular Sense 5

CONCLUSION 8

TABLE OF AUTHORITIES

Page(s)

CASES

Dr. R.C. Samanta Roy Inst. of Science & Tech., Inc. v. Lee Enters., Inc., 2006 WL 3692361 (E.D. Wis. 2006).....7

Harvest House Publishers, et al. v. The Local Church, et al., 190 S.W.3d 204 (Tex.App. – Hous. (1 Dist) 2006).....7

Hooper v. Pitney Bowes, Inc., 895 S.W.2d 773 (Tex. App. – Texarkana 1995).....7

Kennedy v. Children's Serv. Soc'y of Wisconsin, 17 F.3d 980, 984 (7th Cir.1994).....7

Landmark Educ. v. Conde Nast, 23 Media L. Rep. 1283 (N.Y. Sup. 1994).....7

New Testament Missionary Fellowship v. E.P. Dutton & Co., 491 N.Y.S.2d 626, 627-28 (1st Dept. 1985).....7

Pratt v. Nelson, 127 P.3d 1256 (2005).....8

Sands v. Living Word Fellowship, 34 P.3d 955, 959-60 (Alaska 2001).....8

Tuman v. Genesis Associates, 935 F. Supp. 1375 (1996).....7

STATUTES

International Religious Freedom Act of 1998.....3

Pub. L. No. 105-292, 112 Stat. 27871 (Oct. 27, 1998), codified in part at 22 U.S.C. 6401, *et seq*.....3

OTHER AUTHORITIES

Alan Hunter and Kim-Kwong Chan, *Protestantism in Contemporary China*, at 3, n. 3 (Cambridge University Press, 1993).....5

Department of State, *Annual Report on International Religious Freedom*, 1999.....3

Department of State, *Annual Report on International Religious Freedom*, 2002, 2003, 2004, 2005.....6

TABLE OF AUTHORITIES—continued

Page(s)

Department of State, *Annual Report on International Religious Freedom*, 2005 4

Hu Xiaomin, "Xinhua reports on cults in the United States," Beijing Xinhua Domestic Service. September 10, 2006. 4

John Weldon and John Ankerberg, *Encyclopedia of Cults and New Religions*, at xxviii (Harvest House Publishers, 1999) 6

Encyclopedia of Cults and New Religions, at xxvii 8

State Department, *Annual Report on International Religious Freedom* regarding "Stigmatization of Certain Religions by Wrongfully Associating Them With Dangerous 'Cults' or 'Sects.'" 6

United States Commission on International Religious Freedom, *2006 Annual Report*, at 110 3

INTERESTS OF THE *AMICUS CURIAE*

Amici submit this *amicus* brief because of the detrimental effect of publications like the *Encyclopedia of Cults and New Religions* ("ECNR") on religious freedom not only in the United States but also in some religiously intolerant societies throughout the world. Amici[1] are individuals who are concerned about restrictions upon religious freedom in China and elsewhere. They call the attention of the Court to the likely infringement of these freedoms where, as in this case, false allegations of criminal or immoral activities are made against groups with members in these countries, such as the Petitioners, which have approximately one million members in China as well as a large number elsewhere.

Submitting *Amici*:

Ambassador Winston Lord

U.S. Ambassador to the People's Republic of China, 1985-1989, under Presidents Reagan and Bush; President of Council on Foreign Relations, 1977-1985; Special Assistant to National Security Advisor Henry Kissinger; Assistant Secretary of State, East Asian Policy, 1993-1997;

Ambassador Nicholas Platt

U.S. Ambassador to the Philippines (1987-1991) and Pakistan (1991-1992), under Presidents Reagan and Bush; Foreign Service assignments in Hong Kong, Beijing and Tokyo; China Analyst at the State Department; Member of National Security Council, Asian Affairs; Deputy Assistant Secretary of Defense, Asian Affairs; Assistant Secretary of State for United Nations Affairs; Executive Secretary, Department of State; President of the Asia Society for twelve years;

---

[1] No counsel for any party to these proceedings authored this brief, and no other entity or person aside from the *amicus curiae*, and its counsel, made any monetary contribution for the preparation or submission of this brief.

Ambassador Burton Levin

U.S. Ambassador to Myanmar, 1987-1990, under President Reagan; U.S. Consul General in Hong Kong, 1981-1986 and former top China expert at the State Department; Visiting Professor of Asian Politics at Carleton College;

Dr. Ed Irons

Director of the Hong Kong Institute for Culture, Commerce and Religion; former Professor at the Beijing University of Science and Technology;

Bette Bao Lord

Author and Human Rights Activist;

Sidney Rittenberg

A leading American expert on China who has lived in China for 35 years, 16 as a political prisoner; Founder and President of Rittenberg Associates, Inc.

Amici urge this Court to grant the Petition and review the January 5, 2006 decision of the Texas Court of Appeals reversing the trial court's decision and granting summary judgment to Defendants. We concur with the arguments advanced by Petitioners and other *amici* and write separately to emphasize the potential grave impact of the Texas Court of Appeals' decision upon religious freedoms in countries outside of the United States, such as China.

ARGUMENT

I. A Brief Overview of the Religious Situation in China.

Beginning with its first annual report on religious freedom and persecution in September 1999, the United States Department of State has designated China a "country of particular concern" under the International Religious Freedom Act[2] for "particularly severe violations of religious freedom."[3] That report and subsequent reports detail the Chinese government's actions against Christians and other religious minorities who seek to worship according to their conscience and not within official government confines.

In recent years, this suppression has increasingly fallen upon those religious groups that have not officially registered with the Chinese government. Such groups are broadly labeled as "evil cults,"[4] thereby offering a pretext for the actions taken by the government. The Chinese government looks abroad to help form its definition of a "cult," focusing

---

[2] Pub. L. No. 105-292, 112 Stat. 27871 (Oct. 27, 1998), codified in part at 22 U.S.C. 6401, *et seq.* Pursuant to the International Religious Freedom Act of 1998, both the United States Commission on International Religious Freedom and the Department of State are required to publish separate annual reports on religious freedom and persecution.

[3] *See* Department of State, *Annual Report on International Religious Freedom*, 1999.

[4] *See*, for example, United States Commission on International Religious Freedom, *2006 Annual Report*, at 110 ("The campaign against 'evil cults' has, in recent years, expanded beyond the Falun Gong and similar groups to those religious communities that have refused to register and become part of the system of officially-sanctioned religious organizations.... Religious leaders have been imprisoned and followers detained and fined for 'cultist activity'."); Department of State, *Annual Report on International Religious Freedom*, 2005 ("The Government continued its repression of groups that it categorized as 'cults' in general and of small Christian-based groups and the Falun Gong in particular.").

not on theological but societal threats.[5] In a report on cults in the United States issued by China's official Xinhua News Agency, cults are said to "not obey the law, they upset social order, and they create a menace to freedom of religion and social stability. Under the pretence of religion, kindness, and being non-political, they participate in political activities. Some of them even practice criminal activities such as tax evasion, fraud, drug dealing, smuggling, assassination, and kidnapping."[6] By adopting a non-theological working definition of the term "cult," and by raising the possibility of damage to its society, the Chinese government has been able to utilize this term as an effective means of stigmatizing and restricting groups of concern.

The 2005 State Department Report on International Religious Freedom and other reliable estimates place the total number of Christians in China at between 80 and 130 million persons. Included in this number are the government-sanctioned church members registered with the Three-Self Patriotic Movement (Protestant) and the Chinese Patriotic Catholic Association (Catholic), whose combined numbers are estimated at approximately 20 to 25 million persons. The remaining number of Christians, 60 to 105 million, are in unregistered, so-called "house churches." These unregistered "house churches" frequently shoulder the "evil cult" label described previously. Petitioners estimate that there are ap-

---

[5] According to an official 1997 White Paper issued by the Chinese government: http://hrw.org/english/docs/2001/04/10/china242.htm, the Chinese government justifies its actions in the following way: "[S]ince the 1980's some pernicious organizations have sprung up in certain areas of China which engage in illegal and even criminal activities under the signboard of religion. Some of the heads of these pseudo-religions distort religious doctrines, create heresies, deceive the masses, refuse to obey the State's laws and decrees, and incite people to overthrow the government."

[6] *Hu Xiaomin*, "Xinhua reports on cults in the United States," Beijing Xinhua Domestic Service. September 10, 2006.

proximately one million local church[7] members in China included in this number of "house churches." Indeed, some scholars have suggested that the "house church" movement originated with the local churches.[8] There is no question that these unregistered "house churches" loosely associated with the local churches outside of China have been restricted and harassed by the Chinese government on the ground that they are antisocial "cults."

II. The Court of Appeals' Reduction of the Term "Cult" to an "Ecclesiastical" Definition, and its Failure to Address the Secular Understanding of "Cult" as Presented in the Encyclopedia of Cults and New Religions, Increases the Threat of Persecution to Christians Residing in Religiously Restrictive Countries such as China that Employ the Term "Cult" in a Secular Sense.

As discussed earlier, the Chinese government takes its cue as to what constitutes a "cult" by looking toward the West since its understanding is shaped by the non-theological dimensions of cults.[9] When a reputable Christian publisher and ostensibly-credentialed authors publish a reference encyclopedia such as ECNR that touts itself as authoritative, well-researched, and devoted to helping identify and expose the 57

---

[7] Although Respondents use the collective term "The Local Church" to refer to the Petitioner churches in their book, *Encyclopedia of Cults and New Religions*, the Petitioner churches do not use such a collective term to refer to themselves, but rather refer to each church as a "local church."

[8] Alan Hunter and Kim-Kwong Chan, *Protestantism in Contemporary China*, at 3, n. 3 (Cambridge University Press, 1993) ("The term 'house church' (*jiating jiaohui*) may have originated from the movement founded by Watchman Nee (Ni Tuosheng) in the 1930's, which promoted meetings in private homes led by lay persons."). Watchman Nee is widely recognized as the principal founder of the Local Churches.

[9] *See supra* notes 4 and 5 and accompanying text.

most dangerous cults in the world, governments such as China's,[10] pay close attention. Those seeking excuses to persecute religious minorities will find encouragement from the authors of ECNR. In their introduction they boast, "The approach that we have taken in this Encyclopedia is to illustrate as best we can...that the cults do pose a significant threat to society."[11] The so-called "threat to society," as outlined in the Introduction to ECNR, includes criminal conduct ranging from financial fraud to murder and child molestation. Indeed, any government would be derelict if it did not pay close attention to the societal threats allegedly posed by the groups identified in ECNR.

---

[10] At least since 2001, the U.S. State Department has expressed concern in its *Annual Report on International Religious Freedom* regarding "Stigmatization of Certain Religions by Wrongfully Associating Them With Dangerous 'Cults' or 'Sects.'" (A heading in the executive summary of the 2001 version of the report). The 2001 report states: "The governments of a few countries, in an attempt to protect their citizens from dangerous or harmful groups, have adopted discriminating laws and policies. By blurring the distinctions between religions and violent or fraudulent groups, the governments of these countries have disadvantaged groups that may appear to be different or unusual, but are in fact peaceful and straightforward. In all of these countries, existing criminal law is sufficient to address criminal behavior by groups of individuals. New laws or policies that criminalize or stigmatize religious expression can put religious freedom at risk." The section goes on to identify particular instances of such governmental practice in Austria, Belgium, France, and Germany. The State Department followed up with similar sections in its *Religious Freedom* reports for 2002, 2003, 2004, and 2005. Although it is beyond the scope of this brief to detail this European trend, it is important to note that the Chinese government has long used the term "cult" as a pretext for suppression of religious freedoms.

[11] John Weldon and John Ankerberg, *Encyclopedia of Cults and New Religions*, at xxviii (Harvest House Publishers, 1999).

Despite the authors' understanding and use of "cults" to mean groups that "do pose a significant threat to society," the Court of Appeals strangely abridged the definition of "cult" to merely a theological designation. In so doing, the Court of Appeals sanitized the term "cult" from its opprobrious operative use in ECNR and emasculated its forceful secular connotation. Having divorced the term "cult" from its actual usage in ECNR, the Court of Appeals concluded that "being labeled a 'cult' is not actionable because the truth or falsity of the statement depends upon one's religious beliefs, an ecclesiastical matter which cannot and should not be tried in a court of law."[12]

Amici believe this holding is at odds both with better case law throughout the United States[13] and actual practice.[14]

---

[12] *Harvest House Publishers, et al. v. The Local Church, et al.*, 190 S.W.3d 204 (Tex.App. – Hous. (1 Dist) 2006).

[13] *Kennedy v. Children's Serv. Soc'y of Wisconsin*, 17 F.3d 980, 984 (7th Cir.1994) ("[I]t is clear that Gaunt's statements that the Kennedys were unsuitable parents because they belonged to a cult could give rise to a claim of defamation."); *Dr. R.C. Samanta Roy Inst. of Science & Tech., Inc. v. Lee Enters., Inc.*, 2006 WL 3692361 (E.D. Wis. 2006) (holding instead that in context before it, the word "cult" could be actionable, and noting that "a decision of the Seventh Circuit, which is binding on this court, holds that stating that one belongs to a cult can give rise to a claim of defamation"); *New Testament Missionary Fellowship v. E.P. Dutton & Co.*, 491 N.Y.S.2d 626, 627-28 (1st Dept. 1985) (holding that book describing cults and oppressive practices of cults was actionable, noting that the publication operated to "tar all the groups covered by the book with the same brush, citing language that is libelous per se"); *Landmark Educ. v. Conde Nast*, 23 Media L. Rep. 1283 (N.Y. Sup. 1994) (holding actionable an article stating that plaintiff is among America's "most wanted cults"); *Hooper v. Pitney Bowes, Inc.*, 895 S.W.2d 773 (Tex. App. – Texarkana 1995) (being labeled a "cultist" or "cult-like" held actionable). *Tuman v. Genesis Associates*, 935 F. Supp. 1375 (1996) (Plaintiffs sued for slander based on being identified as members of a satanic cult); *Pratt*

Our primary concern is the substantial likelihood that the Chinese government will use the book and the court's ruling as a basis to justify its persecution of house church Christians. By ignoring the actual, secular understanding of the term "cult" as employed by the authors of ECNR and governments such as China's, the Court of Appeals prevented proper adjudication of the book's allegations. The injury is not merely ECNR's libel of the local churches in the United States and abroad. The injury is also the Court of Appeals' unwitting validation of the term "cult," with all of its criminal associations, in its potential application to no fewer than one million local church members, and upwards of 50 to 100 million additional unregistered Christians, in China.

The authors of ECNR recognize and even concede that the practice of categorizing innocent groups in the manner described herein is a reality: "There are many cases in the courts overseas where Christians are treated as if they were cultists."[15] They may not recognize that their inclusion of the local churches in ECNR provides fodder for and lends credence to such treatment. For the sake of tens of millions of Christian believers in China, we implore the Justices of the United States Supreme Court to recognize the important interests at stake in this case and grant the petition.

CONCLUSION

The petition for a writ of certiorari should be granted not only for the reasons submitted by the Petitioners but also because of the potential adverse impact of the decision below

---

v. Nelson, 127 P.3d 1256 (2005) (dismissed on other grounds different from the term "cult" being one of "religious opinion"). *But see Sands v. Living Word Fellowship*, 34 P.3d 955, 959-60 (Alaska 2001) (holding, "[i]t is not factually verifiable whether a certain church is a 'cult' or whether church members are 'cult recruiters.' Instead, these are statements of religious belief and opinion");

[14] *See* text, *supra*, at notes 5 through 7.

[15] *Encyclopedia of Cults and New Religions*, at xxvii.

upon freedoms of religion in other countries, including China.

Respectfully submitted.

Jerome A. Cohen
New York University School of Law
40 Washington Square South
New York, New York 10012
United States
Phone 212-998-6169
Counsel for Amicus Curiae

MAY 2007